

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 2044 - SB 2082

March 30, 2011

SUMMARY OF BILL: Requires the Department of Human Services (DHS) to develop and administer a child care assistance program for low income and at risk children, which will be known as Tennessee Child Care Certificate Program. Requires DHS to notify a child care provider who is in breach of a contract 30 days prior to the Department terminating the contract or withholding more than 25 percent of the provider's average monthly compensation for the lesser of the preceding 12 months or the total number of months the provider has participated in the program. Authorizes the provider to file a complaint with the Tennessee Claims Commission if the provider disagrees with the Department's proposed action and requires the Claims Commission to hold an expedited hearing within 30 days of the provider's filing in order to determine whether the provider has breached the contract. Prohibits DHS from taking the proposed termination or withholding action until the Claims Commission determines that the provider has committed a material breach of contract.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – The Department of Human services will be required to continue payments to a contracted provider of at least 75 percent of the provider's compensation during the 30-day prior notice period and during the Claims Commission's hearing and determination period, if the contractor decides to file a complaint with the Commission. If these extended payments are determined to be disallowed federal payments, DHS will have to return the federal funds that have been paid during that time. The repayment of federal funds will be from state funds if DHS is not able to collect all of the money from the provider. Due to a number of unknown factors, it is not possible to determine an exact amount but it is reasonable to estimate that any contract that payments are extended for disallowed payments could result in an increase in state expenditures exceeding \$50,000 if DHS is not able to recoup the disallowed funds.

Assumptions:

- Currently, DHS is servicing approximately \$2,900,000 in negotiated repayment plans with contracted child care providers to recover improper payments.
- According to DHS, the majority of disallowed payments are returned to the state through repayment plans that are worked out between DHS and the child care provider.

- The proposed legislation will delay or prevent the Department from immediately imposing invoice reductions to recover monies from child care contractors, as the bill requires the Department to provide a 30-day notice and provides the Claims Commission with 30 days to conduct a hearing.
- The Department is prohibited by federal law at 42 USC 9858(c) from assigning children to child care providers and, as a result, must pay for any children enrolled with a contracted child care provider during the complaint resolution period.
- There will be an increase in disallowed payments made to child care providers, resulting in an increase in the amount of federal funds that DHS is required to return. The growth in the amount of disallowed payments will increase the potential that the Department will be unable to recover the total amount of payments.
- Contract terminations resulting from questioned costs identified in audits are rare. In instances when contracts are terminated, the Department is unable to recover disallowed payments. Based on the information available, the last two contracts terminated totaled approximately \$57,797 in disallowable costs which the Department was unable to recover.
- If the Department is not able to recover these improper payments from the provider, state funds will have to be used to reimburse the federal funds. If DHS would have continued payments on the two terminated contracts for an additional 30 days or more, the amount un-recouped would have been greater.
- While it is difficult to determine the exact amount of the total increase, it is estimated that additional un-recouped payments would exceed \$50,000 annually.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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